IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 15030 of 2007

Dated 28th August, 2007

Between

K.Siva Kumar, and, ors

…..Petitioners

and

NTR University of Health Sciences, Vijayawada,
AP, rep. By its Registrar.

…Respondent

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 15030 of 2007

ORDER:

The petitioners, who appeared for the Entrance Test for admission into M.D. (Homoeo), have filed this Writ Petition, seeking direction by way of Writ of Mandamus to the respondent-University, to admit them into the Post Graduation courses of Homoeo for the academic year 2007-2008.

In M.D. (Homoeo), there are three courses of study, i.e. (1) Materia Medica, (2) Homeopathic Philosophy and Organon, and, (3) Repertory. These courses are State-wide courses as per the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, which is popularly known as the Presidential Order, issued in exercise of powers conferred by Clauses (1) and (2) of Article 371-D of the Constitution of India. There are six seats available in each of the above said courses. However, it is stated that in the course of Homeopathic Philosophy and Organon, one seat is reserved for foreign national to be nominated by the Government of India as per the instructions issued in Letter No.R.12013/1/2003-E&C(ii), dated 23-3-2004. As per Paragraph 6 of the Presidential Order, admission to 85% of the available seats in every course of

study, provided by a State-wide University or a State-wide educational institution, shall be made by the local candidates of Andhra University, Osmania University and S.V.University areas in the ratio of 42:36:32 respectively. Apart from the said reservation, 15%, 6% and 25% of the seats available in each course of study are to be reserved for SC, ST and BC categories respectively. In addition to the same, 15% of seats in clinical courses, and, 30% in non-clinical courses, in each course of study, are to be reserved for in-service candidates. In effect, out of the available seats in each course of study, there shall be local area reservation, class reservation, and, reservation for in-service candidates.

For admission into M.D.(Homeo), the petitioners 1 and 2 claimed reservation in the category of Scheduled Caste, whereas third petitioner claimed in the Open Category. According to the petitioners, In the common entrance test, the petitioners 1 to 3 secured ranks of 26,44 and 9 respectively. The first petitioner is the local candidate of Sri Venkateswara University area, second petitioner is the local candidate of Osmania University area, and, third petitioner is the local candidate of Andhra University area. It is the grievance of the petitioners 1 and 2 that they have secured best ranks among the SC category candidates in the local areas of SV University and OU University respectively and in spite of class reservation, they were deprived of seats illegally. Similarly, it is the grievance of the third petitioner that she is the best rank holder among the OC category candidates from Andhra University local area and in spite of the same, seat was given to B.C. category candidate, who got lesser rank than her and she is deprived of the seat.

Counter affidavit is filed by the Registrar of the respondent-University. In the counter affidavit, it is stated that out of the available seats in each course of study, local area reservation as per the Presidential Order, category-wise reservation and reservation for in-service candidates are to be followed while making selections. The distribution of seats, by effecting the above said reservations in each course of study is given as follows:

Sl.No.1	Course	Local Area Reservation	Category Reservation
1	Materia Medica	AU-2, OU-2 SVU-1 and UR-1	OC-3 (Ser.1), BC-B-1, BC-A/D-1, SC-1
2	Homoeopathic Philosophy And Organon	AU-2, OU-1, SVU-1 and UR-1	OC-3 (Ser.1), BC-B-1, BC-A/D-1, SC-1

3	Repertory	AU-2, OU-2 SVU-1 and UR-1	OC-3 (Ser.1), BC-B-1, BC-A/D-1, SC-1

Similarly, In all the three courses of study, i.e. Materia Medica, Homoeophatic Philosophy & Organon, and , Repertory, the details of the candidates selected area-wise, category-wise, and in-service candidates-wise, as stated in the counter affidavit are as follows:

MATERIA MEDICA:

1	1	4120	K. Spandana	OU	BC-D		OC/OU
2.	2	4058	G.Laxminarasiah	SVU	BC-B		OC/SVU
3.	3	4016	B.Bhavana	0U	BC-D		BC-A/D/UR
4.	4	4089	G.Ratnakumari	AU	BC-B		BC-B/AU
5.	48	4041	V.Hemalatha	AU	SC		SC/AU
6.	62	4038	B.Gurunadham	0U	BC-B	SERVICE	OC/OU/SER

HOMOEOPATHIC PHILOSOPHY & ORGANON

1	6	4033	G.Yayathri Prasad	NL	OC		OC/UR
2.	16	4079	L.Radhamani	AU	BC-A		OC/BC-A/D/AU
3.	24	4027	P.Dashagiri	SVU	BC-B		BC/SVU
4.	68	4044	Ch. Jayalaxmi	AU	SC		SC/AU
5.	69	4086	M.Ramana Rao	OU	ST	SERVICE	OC/OU/SER

REPERTORY

1	5	4037	N.Gowri Shankar	OU	BC-A		BC-A/D/OU
2.	7	4062	B.Lokeshwari	SVU	BC-B		BC-B/SVU
3.	11	4114	D.Sirisha	OU	BC-D		OC/BC-A/D/UR

4.	15	4032	B.Gangadhar	AU	BC-B		OC/BC-B/AU
5.	65	4068	N.Manoj Kumar	AU	SC		SC/AU
6.	66	4036	D.Gopal	OU	SC	SERVICE	OC/OU/SER

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It is stated that, the first petitioner belongs to SC category of SV University area, with rank 26. The details of the candidates who have got selection and who were selected under un-reserved seats belonging to other University areas and under non-local category area in each course of study are given in the counter, which are as follows:

S.NO	NAME	RANK	CATEGORY	UNIV.AREA	SELECTED UNDER
MATERIA MEDICA					
1	Dr.G.Lakshminarasaiah	2	BC-B	SVU/Non-Service	OC/SVU
2	Dr.B.Bhavana	3	BC-D	OU/Non-Service	BC-A/D/UR
HOMOEOPATHIC PHILOSOPHY & ORGANON					
1	Dr.G.Gayathir prasad	6	OC	NL/Non-service	OC/UR
2	Dr.P.Dasthagiri	24	BC-B	SVU/Non-Service	BC/SVU
REPORTERY					
1	Dr.B.Lokeswari	7	BC-B	SVU/Non-serviced	BC-B/SVU
2	Dr.D.Sirisha	11	BC-D	OU/Non-Service	OC/BC-A/D/UR

So far as second petitioner is concerned, she belongs to SC category of Osmania University area with rank 44. The details of the candidates who have got selection and who were selected under un-reserved seats belonging to other University areas and under non-local category in each course of study are given, which are as follows:

S.NO	NAME	RANK	CATEGORY	UNIV.AREA	SELECTED UNDER
MATERIA MEDICA					
1	Dr.K.Spandana	1	BC-D	OU/Non-Service	OC/OU
2	Dr.B.Bhavana	3	BC-D	OU/Non-Service	BC-A/D/UR
3	Dr.B.Gurunadham	62	BC-B	OU/Service	OC/OU/Ser
HOMOEOPATHIC PHILOSOPHY & ORGANON					

1	Dr.G.Gayathir prasad	6	OC	NL/Non-service	OC/UR
2	Dr.M.Ramana Rao	69	ST	OU/Service	OC/OU/Ser

REPORTERY

1	Dr.N.Gowri Sankar	5	BC-A	OU/Non-service	BCA/D/OU
2	Dr.D.Sirisha	11	BC-D	OU/Non-Service	OC/BC-A/D/UR
3	Dr.D.Gopal	66	SC	OU/Ser	OC/OU/Ser.

Further, it is stated that the candidates selected under Osmania University area in un-reserved category, either under OC or under non-service category, are meritorious than the second petitioner.

Similarly, third petitioner belongs to OC category of Andhra University area, with rank 9. The details of the candidates, who were selected under un-reserved seats in each of the courses are given, which are as follows:

S.NO	NAME	RANK	CATEGORY	UNIV.AREA	SELECTED UNDER

MATERIA MEDICA

1	Dr.G.Ratnakumari	4	BC-B	AU/Non-Service	BC-B/AU
2	Dr.B.Bhavana	3	BC-D	OU/Non-Service	BC-A/D/UR
3	Dr.V.Hemalatha	48	SC	AU/Non-ser	SC/AU

HOMOEOPATHIC PHILOSOPHY & ORGANON

1	Dr.G.Gayathir prasad	6	OC	NL/Non-service	OC/UR
2	Dr.L.Radhamani	16	BC-A	AU/Non-ser	OC/BC-A/D/AU
3	Dr.Ch.Jayalakshmi	68	SC	AU/Non-ser	SC/AU

REPORTERY

1	Dr.D.Sirisha	11	BC-D	OU/Non-Service	OC/BC-A/D/UR
2	Dr.B.Gandhar	15	BC-B	AU/Non-Service	OC/BC-B/AU
3	Dr.N.Manoj Kumar	65	SC	AU/Non-ser	SC/AU

Though it is admitted that some of the candidates belonging to SC category, who secured ranks of 48,65 and 68, were admitted, but, however, it is stated that as the seats reserved for Andhra University local area candidates are vacant, the candidates of above said ranks from Andhra University area were selected.

Heard Sri C.Ramachandra Raju, learned Counsel appearing for the petitioners, and, Sri D.V.Nagarjuna Babu, learned Standing Counsel appearing for

the respondent-University.

It is submitted by Sri C.Ramachandra Raju, learned Counsel appearing for the petitioners that though there is reservation of 15% to the SC candidates as per the Rules of admissions and prospectus, petitioners 1 and 2, who are the best rank holders among Scheduled Caste candidates, were not admitted in the available seats in the local area of Sri Venkateswara University and Osmania University. It is submitted that there is no explanation as to on what basis reservations were provided. It is further submitted that though the third petitioner is the best rank holder among OC category from Andhra University local area, in spite of the same, she was deprived of allotment of the seat. It is contended by the learned Counsel for the petitioners that in view of the minimum number of available seats, the respondent ought to have clubbed the seats for effecting class reservation of 15% as contemplated under Rules of admission, and, as such, it is submitted that it is not open for the respondent to deprive the seats to the petitioners, who are the best rank holders in the category of SC from local area of Osmania University and Sri Venkateswara University and OC category from the local area of Andhra University.

On the other hand, it is submitted by Sri D.V.Nagarjuna Babu, learned Standing Counsel appearing for the respondent-University that in view of the limited number of seats available in MD (Homoeo) course, selections were made by giving due representation as per the reservation provided in the Presidential Order, namely, Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. It is submitted that as much as admissions are to be made in State-wide institutions, reservations were effected in the ratio of 42:36:22 in favour of the candidates relating to local areas of Andhra University, Osmania University, and Sri Venkateswara University. It is further submitted that each course is a distinct course of study, and, all the seats cannot be clubbed for the purpose of effecting reservations. The learned Counsel placed reliance on the judgments of the Full Bench of this Court in the cases of *Dr.B.Kaladhar Vs. Government of AP*[1], and, *Devarakonda Rajesh Bakbu Vs. the Nizam Institute of Medical Sciences*[2], and, on the judgment of a Division Bench of this Court in the case of *B.Ramesh Vs. University of Health Sciences, Vijayawada*[3].

There are three courses of study in MD (Homoeo), namely, (1) Materia Medica, (2) Homoeopathic Philosophy and Organon, and, (3) Repertory. In each of the said course, there are six seats available. However, out of the six seats in Homoeopathic Philosphy & Organon, one seat is reserved for foreign national to be nominated by the Government of India as per the instructions issued in the letter R.12013/1/2003-E&C(ii), dated 23-3-2004. Selections to the said courses are to be made by following the reservations as per the Presidential Order, namely, Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974, and, by effecting class reservation in favour of SC,ST and BC categories and also by effecting reservation to in-service candidates. Admissions into MD courses of Ayurveda, Unani and Homoeopathy, in the State of Andhra Pradesh, are governed by the Rules, known as 'Rules for admission into MD courses, Ayurveda, Unani and Homoeopathy in the Colleges of Indian Systems of Medicine & Homoeopathy in the State of Andhra Pradesh', framed in exercise of powers under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983. Rule 4 of the said Rules provides reservations in favour of local candidates. As per the Presidential Order, 85% of the available seats shall be reserved in favour of and allocated to the local candidates in relation to the local area in respect of the Andhra University including the Nagarjuna University area, the Osmania University including the Kakatiya University area, and, SV University including the Sri Krishna Devaraya University area in the ratio of 42:36:22 respectively. Further, while determining the number of seats to be reserved in favour of local candidates, in respect of local area any fraction of 0.5 and above shall be counted as one, provided that there shall be at least one un-reserved seat. Further, as per Rule 3 of the said Rules, i.e. 15%, 6% and 25% of the seats available in each course shall be reserved for SC, ST and BC respectively.

As per the provisions of the Presidential Order, '*available seats'* is defined as: in relation to any course of study, means the number of seats provided in that course for admission at any time after excluding those reserved for candidates from outside the State. Para 6 of the Presidential Order deals with the reservation in State-wide Universities and State-wide educational institutions. Further, Para 9 of the Presidential Order gives over-riding effect, which reads as follows:

> "9.**Order to have over-riding effect**: The provisions of this Order shall have effect notwithstanding anything contained in any

statute, ordinance, rule, regulation or other order (whether made before or after the commencement of this Order) in respect of admissions to any University or to any other educational institution subject to control of the State Government."

It is the case of the petitioners 1 and 2 that they are the best rank holders in the category of SC from the local areas of Sri Venkateswara University and Osmania University, and, similarly, the third petitioner claims that she is the best rank holder in OC category from the Andhra University local area, and, in spite of the same, they are deprived of seats illegally. But however, it is to be seen, admissions are to be made following reservations as per the Presidential Order also, which is having over-riding effect. In the judgment of the Full Bench of this Court (1 supra), it is held that local area reservation as contemplated under the provisions of the Presidential Order issued under Article 371-D of the Constitution of India prevails over the general provision for class reservation envisaged under Articles 15 (4) and 16(4) of the Constitution of India. Further, in the said judgment, it is held that class reservation under Articles 15 and 16 has to be confined to the area for which reservation is provided under the Presidential Order. In the said judgment it is held as follows:

"(1) that Article 371-D is intra vires the Constitution;

(2) that any order passed under Article 371-D of the Constitution of India making special provision for area reservation based on the residential qualification is valid and shall prevail over the general provision for class reservation envisaged under Articles 15(4) and/or 16(4) of the Constitution of India.

(3) that the roster for class reservation has to be confined to the area for which reservation is provided under the Presidential Orders and for class reservation in each area independent roster is necessary.

(4) That for the purposes of reservation in appointments after adhering to the area reservation as aforementioned the fiction of carry forward can be applied as envisaged above but such fiction of carry forward cannot be applied to admissions in the educational institutions and any class reservation if at all possible has to be confined to the number of seats available in a particular academic year of admissions. One seat or couple of seats, since area reservation has to be implemented before any class reservation is given effect to cannot be subjected to either the so called rule of de-reservation or the rule of class reservation they are to be made available first in accordance with the Presidential Order for each area of reservation. The rule in this behalf will be as one indicated in the

judgment of this Court in P.Padmanabha Reddy's case (AIR 1984 AP 129) or B.Ramesh's case (AIR 1991 AP 1) as the case may be"

Further, in the case of B.Ramesh (3 supra), the Division Bench of this Court held as under:

> "Article 371 D provides that having regard to the requirements of the State as a whole, for providing equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education, the President may make an order with respect to the State of Andhra Pradesh and different provisions may be made for various parts of the State. We have already outlines the scope of the Presidential Order. We may briefly state the same again; it may be noted that the whole State is divided into three local areas having regard to the jurisdiction of the Universities in the State. 85% of the available seats in each of the educational institutions under the control of the State Government are reserved for each local area and 15% of the seats are left open as unreserved for which, inter alia, the candidates of the other local area can compete though there is also a provision in Article 371D enabling the President to make different provisions for different parts of the State. The Order passed by the President it is obvious, provides equitable opportunities to each local area equally. Opportunities for the residents of the State are equitably distributed. This is in respect of non-Statewide institutions. In regard to the Statewide institutions, as noticed above, 85 percent of the seats available are divided having regard to the requirements of the State in the ratio of 42:36:32. Nothing inconsistent with article 371D is pointed out in regard to the provisions of the Presidential Order. The substance of the submissions of the learned Counsel is that in one local area of University there are certain courses of Super Specialties which if reserved for that local candidates would result in depriving the non-local candidates of the chance of getting admission so when the seats are limited they should be treated as un-reserved. We are afraid we cannot accept this contention as it is contrary to the scheme of the Presidential Order."

Though it is the case of the petitioners that they are the better rank holders than the some of the candidates admitted in their respective local areas, but, however, from the selection list, it is clear that the candidates who are admitted in the un-reserved seats are better rank holders than the petitioners. Even in the Andhra University local area, the candidates, who are admitted with lesser ranks than the petitioners, are admitted only in view of the available seats for that local area candidates, as per the applicable provisions of the Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974. So far as petitioners 1 and 2 are concerned, the candidates selected from unreserved category either under OC/non-service, are meritorious than the petitioners 1 and 2. Even in the Open Category, the candidate who is admitted from the Andhra University local area is

better rank holder than the third petitioner. In that view of the matter, the admissions made to the various courses of study in MD (Homoeo) are in accordance with the provisions of the Presidential Order, which is having over-riding effect, for the purpose of giving effect to reservation to the local candidates of the different local areas, and, as such, prevails over the general provision for class reservation envisaged under Article 15 (4) of the Constitution of India. Even the submission of the learned Counsel for the petitioners that in view of the limited number of seats available in different courses of study, the respondents should have pooled the seats for the purpose of effecting reservation to SC,ST and BC category candidates also cannot be accepted. This Court has already held that each PG course is a distinct course of study and for the purpose of implementing the Presidential Order, number of seats available in each course have to be taken separately, to give due representation to such of the reservations. In any event, no relief can be granted in the Writ Petition, for the reason, that though available seats are filled up and list of selected candidates is available, they are not before this Court. Grant of any direction for admission of the petitioners will affect the admitted candidates in view of fixed number of seats available.

For the foregoing reasons , I do not find any infirmity in the selection procedure for admission of the students in the PG course of M.D.(Homoeo).

The Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 28th August, 2007.
Msnr.

[1] 2006(1) ALD 1 (FB)

[2] AIR 1998 AP 162 (FB)

[3] AIR 1991 AP 1